



Harbour divestiture in Canada: Implications of changing governance



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ABSTRACT

Legislation aimed at protecting the marine ecosystems has direct impacts on environmental management of port and harbour operations. As such, environmental management of harbours requires a great deal of technical and financial resources to operate effectively. In Canada, this technical expertise and governance has been provided by the federal government for federally owned harbours. These harbours have been increasingly divested to provincial, municipal, or private owners, but are often contaminated from historical industrial activities and pose potential risks to marine ecosystems. Following divestiture there may be consequences associated with change of governance, because new harbour managers may lack technical and financial resources to follow existing management protocols. Harbour uses often do not change appreciably once divested, thus impacts to sediments, or requirements for maintenance and upgrades will typically continue following change of authority. Policies to implement education and training are therefore essential following change of authority for new custodians to properly understand historical contamination impacts and associated environmental liabilities. Adhering to established management protocols will enable new harbour managers to more effectively manage potential environmental liabilities associated with divested harbours.

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1. Introduction

Legislation aimed at protecting marine ecosystems has direct impacts on environmental management of port and harbour facilities [1,2]. As such, environmental management of harbours requires a great deal of technical and financial resources to operate effectively [3]. In Canada, this technical expertise and governance has been provided via the federal government (e.g., Transport Canada [TC] and the Fisheries and Oceans Canada Small Craft Harbour [DFO-SCH] programme) [4,5].

Canada's ports and harbours, including SCHs for fishing and recreational users, are vitally important for transportation and the economy [6,7]. Until recently, the federal government managed and maintained a vast network of ports (> 400) and harbours (> 1000) providing critical transport infrastructure and regional economic development across Canada [4,5]. However, few of these harbours were profitable, so in 1995 the federal government made port and harbour divestiture an official policy [8–10]. The *Canada*

Marine Act received Royal Assent in 1998, and implemented the *National Marine Policy*, which introduced commercial principles for managing marine infrastructure to achieve greater efficiencies [11,9]. The goal of divestiture was designed to improve the efficiency of Canadian marine transportation by rationalising port systems and placing decision-making in the hands of users and local interests best placed to operate them [10].

Since implementing the *National Marine Policy*, the federal government has attempted to strengthen the public port and harbour system by transferring management and operation of major ports to not-for-profit organisations. The *Canada Marine Act* allowed for divestiture of public port facilities to local interests, provincial or municipal governments, allowing communities to own and control local facilities and determine appropriate levels of service and maintenance. In the absence of any local interest in taking over public port facilities, the *Canada Marine Act* allowed the government to terminate its' interests in these facilities [11]. However, current divestiture policy needs to consider future management implications of harbours, many of which have environmental liabilities, such as marine debris [12], or associated with widespread sediment contamination [13–15]. Furthermore,

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new owners may ultimately bear financial and technical burdens associated with maintaining and managing these ports and harbours in the future. At the same time new owners may also lack the necessary technical and financial resources to properly manage these harbours [16].

This paper examines the federal harbour divestiture policy, ranging from divestiture of large port facilities to divestiture of smaller fishing and recreational harbours (e.g., SCHs). Consideration is given to policy issues related to harbour divestiture to third party provincial, municipal or private owners, which may lack technical and financial resources to manage environmental liabilities.

1.1. Methodology and approach

An assessment was made to determine the current harbour divestiture programme using published and grey literature reviews, including federal government website information (e.g., <http://www.dfo-mpo.gc.ca/sch-ppb/divestiture-dessaisissement-eng.asp> and <https://www.tc.gc.ca/eng/programs/ports-menu-1127.htm>). Following the assessment some of the potential limitations associated with changing governance using case examples of harbours currently undergoing divestiture across Canada were highlighted. Case examples include: (i) Marystown Harbour, Newfoundland and Labrador; (ii) Sydney Harbour, Nova Scotia; (iii) Digby Harbour, Nova Scotia; (iv) Owen Sound Harbour, Ontario; and (v) Ridley Terminals, Prince Rupert, British Columbia. Based on this preliminary research suggestions are made to some elements of the federal divestiture programme that could be improved, whilst ensuring that the efficiencies of harbour divestiture are not compromised.

The aim of this paper is to make policy recommendations to improve management of marine harbours once divested. Recommendations for divestiture include: (1) provision for adequate training and mentoring of new custodians by government agencies; (2) provisions to allow new custodians to generate new sources of revenue to cover management costs; (3) following established management protocols; and (4) consultation and engagement between the federal government and First Nation communities prior to divestiture.

2. Current federal responsibility of harbour divestiture in Canada

In 2014, the Canadian government proposed to provide \$33 million (CAD) over two years to support divestiture of remaining port facilities and the continued operation and maintenance of federally owned ports; and a further \$40 million to facilitate repair and maintenance work in SCHs across Canada [17]. Port (or harbour) divestiture allows for local communities to own and operate their own facilities. By divesting ports or harbours, the federal government is performing *subsidiarity* downloading of responsibility to local third parties. The trend of *subsidiarity* by governments is growing globally, although the pace and scope of divestiture in Canada is more extreme than in other jurisdictions, such as Europe [16].

2.1. Small craft harbour divestiture programme

Fishing has historically been very important to the Canadian economy and culture [18,19]. As such, the DFO-SCH programme operated and maintained > 1000 harbours (comprising of 900 fishing and 135 recreational harbours) across Canada to provide commercial fishers and recreational users with safe and accessible facilities [20,4,21]. Mandated in 1973, in accordance with the

Fishing and Recreational Harbours Act, the DFO-SCH programme maintained harbours “critical to commercial fisheries at an acceptable standard” [20]. Prior to the implementation of the *National Marine Policy* and Port Divestiture Programme (PDP), the federal government began transferring ownership of recreational and fishing harbours with minimal activity to community-based groups. The DFO-SCH programme retained only essential harbours to the commercial fishery and expanded private sector involvement in the management of *core* harbours. The DFO-SCH programme mandate is to maintain harbours open and in good repair, and is managed by five regions across Canada: Newfoundland and Labrador; Maritimes and Gulf; Quebec; Central and Arctic; and Pacific.

Each year the Canadian government spends significant funds on harbour maintenance and upgrades, including sediment dredging to maintain navigable access [3]. The current vision for DFO-SCH is to maintain only a network of essential harbours, and to transfer ownership of all non-essential harbours through divestiture:

“Port divestiture improves the efficiency of Canadian marine transportation by rationalising the port system and placing decision making and operations in the hands of users and local interests” [10].

Prior to divesting harbours, DFO-SCH is responsible for performing all designated repairs and environmental clean-ups, by undertaking the work or supplementing new owners with financial grants. In order of priority, harbours are offered to: other federal departments; provinces; municipalities; or local non-profit groups (e.g., First Nations). New owners pay a nominal fee and have to ensure that public have access to harbours and services for at least five years. To date there have been 710 recreational and 400 fishing harbours divested by DFO-SCH. An additional 134 recreational harbours are in progress of being divested [10] (Fig. 1; Table 1).

Since the implementation of the federal harbour divestiture policy in 1995, roughly 33 harbours have been divested annually. However, there is a distinct divide amongst the provincial distribution of harbours designated for recreational use (Table 1). Currently, approximately 76% of harbours still to be divested are located in Ontario and Quebec within the interior of Canada and none are scheduled for divestiture within Canada's three territories which presumably are considered *core* fishing harbours because of their remoteness.

2.2. Transport Canada harbour divestiture programme

Since adopting the *National Marine Policy*, TC has been transferring a diverse suite of Canada-wide marine assets, such as: ports, wharves, docks, breakwaters, property and harbour bottoms. Harbour bottoms are water lots where TC has no port facilities, but ships load or unload at private, provincial or municipal wharves or docks, or transfer goods from ship-to-ship. To date, TC has divested 180 ports, and is poised to divest a further 60 [22]. Again, there is a large variation among the regional distribution of harbour ports under federal jurisdiction (Table 2). The majority of federally divested ports are located in eastern Canada (e.g., Newfoundland and Nova Scotia), with the exception being New Brunswick. Central Canada (e.g., Ontario and Quebec) has a number of federally divested ports located around the Great Lakes and St. Lawrence River. Interestingly, British Columbia has only divested one port in Victoria, despite having a 29,000 km coastline [22]. The exceptions being a number of remote ports which TC maintains because of community accessibility.

2.3. Environmental legislation

Each year the Canadian government spends significant funds

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